IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5937 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE H.L.GOKHALE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

INDIAN PETROCHEMICALS CORPORATION LIMITED

Versus

NARESH MANUBHAI PATEL

Appearance:

NANAVATI ASSOCIATES for Petitioner

MR RK MISHRA for Respondent No. 1

CORAM : MR.JUSTICE H.L.GOKHALE

Date of decision: 16/10/97

ORAL JUDGEMENT

Heard Mr.K.S.Nanavati, Senior Advocate with Mr. Gandhi for the petitioner employer and Mr. V.B.Patel, Senior Advocate with Mr. R.K.Mishra for the respondents workmen.

2. The petitioner herein seeks to challenge the award of the Industrial Tribunal No.2 at Vadodara, dt. 19/6/1997 in Reference (I.T.) No.44/94. That award

directs the petitioner employer to regularise the services of Respondent Nos. 1 to 10 -workmen concerned by making them permanent and by giving them benefits of the regular employees from the date on which they completed 240 working days counted from their initial appointments. For respondent nos.11 and 12, the order is slightly different.

3. Rule is issued on the petition and the same is made returnable forthwith. Mr. Mishra has waived the service of Rule on behalf of the respondents. Both the learned Counsel appearing for the parties have advanced their submissions in details. Mr. Gandhi has made submissions on behalf of the petitioner employer and Mr. Nanavati, Senior Advocate has done the summing up.

4. The short facts leading to the petition are this wise:-

The petitioner sought the names of drivers from the Employment Exchange vide their letter dated 18/2/1989 (at Page 21 of the petition) on consolidated salary of Rs.550/- per month. The 12 respondents came to appointed in pursuance thereto on 1/6/1989. Inspite of their working for an year and completing 240 days, they came to be terminated. The respondents raised the demand of reinstatement. The Reference of the dispute with respect to Respondent Nos. 1 to 10 came to be allowed by the Labour Court, Baroda on 10/6/1993. The petitioners accepted the award and reinstated Respondent Nos. 1 to 10 by order dated 7/7/1993 (at Page 20) though on contingent basis and consolidated wages of Rs.1,000/- per month. On 20/7/1993, on behalf of the respondents, the demand of regularisation and parity in wages was raised. This is because for doing the same job, the regular drivers were receiving over Rs.4,000/- per month. That has come to be allowed by the impugned award dated 19/6/1997 with reference to Respondent Nos. 1 to 10. As far as the Respondent Nos. 11 and 12 are concerned, their initial reference for reinstatement was not decided by the date of this award. The Tribunal has, therefore, provided in the impugned award that if and when they get award of reinstatement, they will also be entitled to the similar benefit.

5. Mr. Nanavati, and Mr. Gandhi made the following submissions on behalf of the petitioners:-

It was firstly submitted that the Tribunal had no

jurisdiction to pass the kind of award that had been passed. For this purpose, they relied upon a judgment of a Single Judge of Panjab High Court in 1962 (2) LLJ 269, Sukhjit Starch & Chemicals, Ltd., Vs. State of Punjab and others. That was a case where the learned Single Judge has held that Industrial Tribunal could not direct the management to absorb a particular number of badlis as permanent workmen and to consider the case of others for permanency as and when they complete 200 days of work as badli workmen. In the present case, we are not concerned with Badalis but workmen called from Employment Exchange who have put in more than 240 days of work every year for more than four years. Besides as far as the power of Tribunal to modify service contract is concerned, a Division Bench of the Bombay High Court has held in N.J.Chavan Vs. P.D.Sawarkar, AIR 1958 Bombay 133 as to what should be the principles of law in such cases. While determining the question of continuity of service, the Bombay High Court held that the Industrial Tribunal does have not only power but the duty to modify contractual rights and obligation, if it becomes necessary to do so. The relevant paragraph on Page 135 of the judgment reads as follows:-

"With respect to the Tribunal, it is plain that they have completely lost sight of the principles of law to be applied in determining the question of continuity of service. They appear to have decided the matter relying upon the doctrine of sanctity of contract. This doctrine governed the relations of employer and employees in the 19th Century but is now obsolete; and it is the duty of an Industrial Court or Tribunal to modify the contractual rights and obligations if it becomes necessary to do so in the light of industrial legislation and legal decisions relating thereto. The whole approach of the Tribunal to the question is, with respect, wrong in law and thereby the decision of the Tribunal on this point is vitiated and must be set aside."

6. Mr. Patel contended that the workmen were entitled to be regularised with parity in wages after completing 240 working days in a year. Mr. Nanavati disputed their claim contending that there is no such right in any statute. Alternatively, Mr. Patel relied on the judgment of the Supreme Court in the case of Bhagwatiprasad Vs. Delhi State Mineral Development Corporation reported in 1990 (1) SCC 361. In Para 6 of the judgment, the Hon'ble Supreme Court has held as follows:-

"Practical experience would always aid the person to effectively discharge the duties and is a sure guide to assess the suitability. The initial minimum educational qualification prescribed for the different posts is undoubtedly a factor to be reckoned with, but it is so at the time of the initial entry into the service. Once the appointments were made as daily rated workers and they were allowed to work for a considerable length of time, it would be hard and harsh to deny them the confirmation in the respective posts on the ground that they lack the prescribed educational qualifications."

In that matter, the Supreme Court held that three years experience ignoring artificial brakes in service for short period/periods would be sufficient for confirmation. In the instant case, Respondent Nos. 1 to 12 have completed more than 4 years of continuous service after their reinstatement on 10/6/1993, whereas Respondent Nos. 11 and 12 are yet to be reinstated though it is informed that after the award of the Tribunal in the present case, the order of reinstatement is passed by the Labour Court. In the circumstances, without going into the question of availability of a right of regularisation after 240 days, in any case, the respondents Nos. 1 to 10 can claim the similar benefit by applying the yardstick of 3 years experience under the judgment in Bhagwatiprasad case (Supra).

7. In the present case, the workmen have led evidence before the Tribunal. Their case is that they were initially appointed on 1/6/1989 and although they completed 240 days of service, they were terminated on 5/6/1990. They raised demand for reinstatement and the Labour Court awarded reinstatement to Respondent Nos. 1 to 10 on 10th June, 1993. That award was not challenged by the petitioners. The respondents joined back on 7/7/1993. On 20th July 1993 they raised demand for regularisation and parity with regular employees. They have continuously worked since 10th June 1993 till the award of the Tribunal and even thereafter. The stand of the Management is that their services were temporary and for specified period but it has come on record that their services were never terminated. No brakes, not even technical ones were resorted to by the petitioner management. It has also come on the record that they

were given overtime work and they have produced salary slips to that effect which is referred to in Para 9 of the impugned award. The management has not pointed out that their services were in any way unsatisfactory or there were any accidents or there were any irregularities in attendance or misbehaviour by any of them. In this view of the matter, if the workmen concerned are discharging the same duties as the regular drivers continuously from their reinstatement on 10th June, 1993 till the date of the award (and thereafter also), the Tribunal cannot be faulted for taking cognisance of these development and directing their regularisation and giving them parity with the regular employees. Mr. Nanavati submitted that the management had held interview earlier when their names were called from Employment Exchange in 1979 and these very persons were those who had failed in that interview. That time some others were appointed on regular basis whereas these workmen were appointed on consolidated pay on contingent basis.If that was so, nothing prevented the management from discontinuing their services during all this period which they did not. The work to be done is that of a driver and the duties of respondents are identical to regular drivers. It was a technical post and their competence is established by the very fact of their continuous service with overtime work. Having put in continuous service of over four years from 10/6/1993, they squarely came under the dicta of the Supreme Court in Bhagwati Prasad's case (supra), when the Industrial Tribunal decided their reference on 19/6/1997.

8. The Second submission of Mr. Nanavati was that such a direction of regularization could not be given. He relied upon the judgment of the Supreme Court in 1995 ILLJ 927, Dr.Arundhati Ajit Pragaonkar Vs. State of Maharashtra & Others, wherein inspite of long years of service (nine years), the Supreme Court has held that her service could not be regularized. Here what is to be noted is that she had not come through proper channel and she was retained all throughout as a temporary employee. That was a case with respect to a post in civil service. In the instant case, as stated above, we are concerned with the Industrial Workmen whose relations with their employers are governed under the Industrial Disputes Act and as stated by the Division Bench of the Bombay High Court in N.J.Chavan's case (supra) that it is not merely the power but the duty of the Tribunal to pass appropriate orders to modify terms of contract, if required, whenever necessary. And in Bhagwatiprasad's case (supra), the Supreme Court has granted similar regularisation to workmen governed under I.D.Act who were

performing similar duties for a period over 3 years. Next judgment relied upon by Mr. Nanavati in the case between Surendra Kumar Gyani and State of Rajasthan, in AIR 1993 Supreme Court, 115, where the orders of termination of service on availability of properly recruited employees from Public Service Commission were held to be valid. In the instant case, names of the employees concerned were called for through Employment Exchange but that apart, since this is a case not related to the posts in civil service, the above referred dicta of the Bhagwati Prasad and N.J.Chavan's cases will govern the situation.

9. The next submission of Mr. Nanavati was that the Tribunal could not have awarded the benefits from the date on which the workmen concerned completed 240 days. He submitted that it would mean that the concerned workmen will get the benefits from 1/6/1990 onwards. That was the time when some others were selected in preference to these workmen. Besides, it would also mean giving them parity and wages when they were not actually working i.e. during the period from 5/6/1990 to 7/7/1993. An award can be given effect to from the date of demand or the date of making of the reference as well. In the present case, the ten workmen were appointed initially on 1/6/1989. Though they completed more than 240 days of service, they were terminated on 5/6/1990. They were reinstated on 7/7/1993 by virtue of Labour Court award dated 10/6/1993. On 20/7/1993, they raised the demand for regularisation. The reference was made on 16/3/1994. They have worked continuously since 7/7/1993, and their eligibility for regularisation was adjudicated in their favour on 19/6/1997. In the present case, it would be just and proper that the award is modified to provide that instead of the date of completion of 240 days, the Respondent Nos. 1 to 10 will be regularised as permanent drivers from the date of reference i.e. 16/3/1994. This is because the demand concerned had to be referred to and adjudicated one way or other. The consideration of their service over three years has justified giving them equal benefits for the equal work put in. Giving them equal benefits from the date of reference will compensate them for the equal work taken from them to a great extent, if not fully.

10. As stated above, these ten respondents, though called through Employment Exchange, were not selected when some others were appointed on regular basis in preference over them. The petitioner can legitimately contend that granting them regularisation on completing 240 days would make the selection process completely

irrelevant. The discharge of same duties with equal efficiency continuously over substantial period of time can alone be a basis for their regularisation. From that point of view also the application of yardstick of 3 years used by the Supreme Court is a desirable course in the facts of this case. This, however, does not mean that in no case, workmen can claim regularisation on completing 240 days, and that aspect is not gone into since the cautious yardstick of 3 years experience is considered preferable in the facts of the present case.

10. The impugned award also provides that two other workmen viz. respondent Nos. 11 and 12 will also get similar benefits, if they obtain an award of reinstatement from the Labour Court. Their matters for reinstatement were pending adjudication on the date on which the presently impugned award was passed. Mr. Patel points out that subsequently these two workmen have obtained the award of reinstatement. In that case, it will be open to them to raise demand on a similar footing that they should be regularised. What has gone in favour of respondent Nos. 1 to 10 is their continuous service of more than three years after acceptance of the award of reinstatement given by the Labour Court. This fact is presently not available in support of these two workmen which can be a distinguishing factor . It is open to these two workmen to raise their demand for regularisation. It will be for the petitioner employer to either accept the same or to take any other steps, if it deemed proper. That part of the direction in the impugned award conferring the similar benefits to these two workmen is therefore presently interfered with.

12. The petition is therefore partly allowed. Rule is made absolute to the aforesaid limited extent namely that the benefits of the impugned award will be available to respondent Nos. 1 to 10 not from the date of completion of 240 days but from date of reference i.e. 16/3/1994 and will be available only to these 10 workmen. The other part of the award granting parity in wages and permanency in regular post to these 10 persons stands undisturbed. The petitioner employer is directed to clear the arrears on the above basis to the above 10 workmen on or before 30th November, 1997. The part of the award granting similar benefits to respondent Nos. 11 and 12 as of now stands quashed. The parties will bear their own costs.

(ccs)